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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 San Francisco Technology Inc.,
15 Plaintiff,
16 v.
17 Bayer Corporation,
18 Defendant.
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Case No.: CV10-03246 JF PVT

Judge: Hon. Jeremy Fogel
Date: January 20, 2011
Time: 1:30 p.m.
Courtroom: 3, 5th Floor

**DEFENDANT BAYER
CORPORATION'S REPLY IN
SUPPORT OF MOTION
TO TRANSFER**

Complaint Filed: July 26, 2010

1 On December 16, 2010, defendant Bayer Corporation (“Bayer”) filed a motion to transfer
 2 the action filed by plaintiff San Francisco Technology Inc. (“SF Tech”) to the Southern District of
 3 New York. The deadline for SF Tech to file its opposition was December 30, 2010. No
 4 opposition was filed. As such, SF Tech has conceded the propriety of a transfer of this action.

5 The Federal Circuit recently issued a precedential order granting a petition for a writ of
 6 mandamus and directed a district court to transfer an action when the plaintiff did not have a
 7 meaningful connection to the forum. *In re Microsoft Corp.*, No. 944, 2011 U.S. App. LEXIS 80
 8 (Fed. Cir. Jan. 5, 2011). In *In re Microsoft*, the Federal Circuit rejected plaintiff’s claimed
 9 connection to its preferred forum as being made in anticipation of litigation and for the likely
 10 purpose of making that forum appear convenient. *Id.* at *6. The plaintiff’s offices, which were
 11 located in its preferred forum, were “recent, ephemeral, and a construct for litigation and
 12 appeared to exist for no other purpose than to manipulate venue.” *Id.* at * 8-9. Here, it appears
 13 that SF Tech’s sole purpose is litigating false marking suits. The address for SF Tech’s principal
 14 place of business is the same as that for its litigation counsel of record. (Declaration of Daniel P.
 15 Muino (Dkt. No. 17) ¶ 3, Ex. B.) Like the *In re Microsoft* plaintiff, SF Tech’s presence in this
 16 district, created in anticipation of litigation, should be given little weight. Accordingly, Bayer
 17 respectfully requests that its motion to transfer this action to the Southern District of New York
 18 be granted.

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 20 Dated: January 6, 2011

Respectfully submitted,

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 22 By: /s/ Daniel P. Muino
 23 WESLEY E. OVERSON
 24 DANIEL P. MUINO
 25 DAISY DANIELLE COLEMAN

26
 27 Attorneys for Defendant
 28 BAYER CORPORATION

CERTIFICATE OF SERVICE

The undersigned certifies that on January 6, 2011, the foregoing document was filed with the Clerk of the U.S. District Court for the Northern District of California, using the court's electronic filing system (ECF), in compliance with Civil L.R. 5-4 and General Order 45. The ECF system serves a "Notice of Electronic Filing" to all parties and counsel who have appeared in this action, who have consented under Civil L.R. 5-5 and General Order 45 to accept that Notice as service of this document.

/s/ Daniel P. Muino

DANIEL P. MUINO

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